

No. 884.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court
of the State of Illinois.

OBJECTION TO MOTION OF AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The Illinois State Bar Association and the individual Respondents, all members of the State Bar's Committee on the Unauthorized Practice of Law hereby respectfully object to the motion of the American Federation of Labor and Congress of Industrial Organizations, hereinafter called AFL-CIO, for leave to file a brief amicus curiae in

the instant case. Consent to file an *amicus* brief was refused by counsel for respondents. This action of refusal was not capriciously taken by respondents.

REASONS FOR OBJECTION TO MOTION.

1. The AFL-CIO clearly demonstrates in its motion that it seeks leave to participate as a **party** to the action. Its discourse under the heading "Interest of the AFL-CIO, on pages iii and iv of its motion, points out that it considers itself in that category.

"An *amicus curiae* is not a party to the action, but is merely a friend of the court whose **sole** function is to advise, or make suggestions to the court." **Clark v. Sandusky**, 205 F. 2d 915; **Klein v. Less**, 43 A. 2d 755.

As ably stated by Mr. Justice Shaw in his additional opinion filed in the case of **Froehler v. No. American Life Insurance Co.**, 374 Ill. 17 at 27:

"Any case decided by this court may vitally affect pending litigation or controversies between other parties, but this does not necessarily justify intervention. Intervention by counsel as a friend of the court is only justified when the intervenor can show to the court that to protect it in the consideration of the case, such aid seems necessary or advisable."

The AFL-CIO is endeavoring to thrust its influence or power as a representative of many union members upon the deliberation of this Court on a specific local problem related only to the United Mine Workers Union, District 12, and the claimed unauthorized practice of law by it in the State of Illinois, and fails in its motion to advise this court that any of its One Hundred Twenty Nine affiliates have similar legal arrangements.

2. Movant stresses that the "question presented by the instant case is whether union members may further their

undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights, by voting to set up a plan whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their number as need his services" (pages iii and iv of motion).

To properly respond to this erroneous statement of the issue in this case, we must separate the above quotation into two parts:

"a) Whether union members may further their undoubted constitutional right to associate for the purpose of preserving and enforcing their legal rights;

b) by voting to set up a plan whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their number as need his services."

In considering (a) above, we must look to the facts which gave rise to the initial suit for injunction. For a number of years United Mine Workers, District 12, has hired an Illinois attorney to handle Illinois Workmen's Compensation cases of its members on a salaried basis (R. 3, pp. 17-19). At the time of this litigation, one Stuart Traynor was hired in that capacity by the union (R. 3, pp. 18-19). He received for the period January through November of 1964, the sum of \$11,366.68 in salary, and \$1497.60 in expenses (R. 7, p. 44). His annual salary was \$12,400 plus expenses (R. 7, p. 44). During a period from October, 1963, to December, 1964, 637 claims filed before the Commission were concluded by payments totaling \$737,968.27 (R. 7, pp. 35-36). The representation of each Miner was extremely impersonal. He seldom saw his client until the day of the hearing (R. 7, p. 21). Others fill out the application for adjustment of claim (R. 7, p. 9) or the report to attorney on accidents (R. 7, pp. 12-15). This latter report contains no language of employment of Stuart Traynor as the injured man's attorney or authority

to file a claim (R. 3, p. 20; R. 7, p. 14). The claim is concluded either by agreed settlement procedures or by a hearing before an arbitrator on the Industrial Commission staff. The attorney never receives a fee from the injured worker and all settlement drafts from insurance companies go directly to the worker.

One can observe from a reading of the facts stated above that we are dealing in this case with a matter of concern to the State of Illinois only. Stuart Traynor is an Illinois attorney practicing before an Illinois tribunal, The Industrial Commission, created by The Illinois Legislature. As an attorney he is subject to the rules and regulations as to the practice of the Illinois Supreme Court. His activity was brought to the attention of this State Court by this action. The conduct and activity of United Mine Workers of America, District 12, in the State of Illinois, was also reviewed and, relying upon previous decisions of its court and the Canons of Ethics, held that the Union's activity and its violation of **state protected rights** (not Federally protected rights, i. e., FELA), the Mine Workers, by this decision are not deprived of any rights to which they are constitutionally entitled. This may well be the argument between the two interested parties in this lawsuit, as to the particular facts of this case, but it is not a matter of universal concern to the movant or any of its affiliates because of its local intrastate character.

A further objection to this intervention as a "so-called" friend of the court is found in (b) above. Movant expresses concern for the plight of the union because the members' concerted activity was setting up a plan "whereby a portion of their union dues is earmarked to pay an attorney to advise and represent such of their member as need his services". This is not the facts of our case at all. If movant had read the record it would be clear that "**no portion of dues is allocated to pay at-**

"attorney's salary" (R. 3, p. 19) (emphasis supplied). This information was furnished by the union, under oath, in answer to interrogatories. Here, again, the actual facts do not support the AFL-CIO's cry of concern for the labor movement. It is apparent by this erroneous statement that counsel for movant has a misconception of the problem before the Court, and is endeavoring to read into it something that is not present in order to present his harangue in the brief filed with his motion. This is a bold attempt to confuse the court and should not be tolerated.

Finally, the AFL-CIO profess a profound interest in seeing that working men have access to effective counsel. From the record we observe that M. J. Hannegan from January, 1961 until his death, averaged \$1,400 per case recovery, whereas the last attorney, Stuart Traynor, averaged only \$1,150 per case (R. 7, pp. 35-36, 43). The Union's factual answers to interrogatories answers this argument with mathematical certainty. We find a loss of \$250 per case average. Is this the effective counsel arrangement the AFL-CIO believes is so sacred? The impersonal nature of this representation eloquently demonstrates the need for the action taken by the Bar Association and the decision reached by the Illinois Supreme Court. We will, of course, in our Brief in Opposition to the Petition for Writ of Certiorari, give greater attention to this and to the full intent and meaning of the **Illinois Brotherhood** case, 13 Ill. 2d 391. One cannot claim that the filing of 416 claims in one year and the processing to conclusion of 487 claims in that same period by a person on a salary of \$12,400 is going to assure the working man that (1) he is receiving effective representation; (2) he is receiving maximum on his claim, or (3) he will not be subverted to other interests during the processing of his matter. The presence of the individual attorney-client relationship is lacking and the public, in this instance—the mineworker, is being made a mere pawn in the greater scheme of things within the labor movement.

3. Movant claims that the decision below has serious consequences upon workers' ability to secure "truly adequate legal representation", and advances that recent writings on group legal services prove this. Its discourse in its brief on this subject merely sets forth one side of a highly controversial and untried subject-matter. Much is made of the so-called California Plan which was rejected by the Board of Governor of the California Bar and has not received approval since its rejection. **Lawyers at the Crossroads; Unauthorized Practice News**, Vol. xxxii No. 2, Summer 1966. This discussion can hardly be said to aid, advise or even be suggestive to this court when the facts in our instant case belie "truly adequate legal representation" afforded to the Mine workers in Illinois.

CONCLUSION.

It is evident from the objections indicated herein that the motion filed by the AFL-CIO for leave to file a brief amicus curiae should not be granted. Respondents respectfully request the court to deny this motion and to consider this case as between the original interested parties, The Illinois State Bar Association and its Committee, and the United Mine Workers of America, District 12, upon the Petition for Brief in Opposition as are to be filed herein.

Respectfully submitted,

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